

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
SAMSON TUG AND BARGE CO.,
INC., an Alaska Corporation,

Plaintiff/Appellant,

vs. Civil No. A03-006 CV(JWS)

UNITED STATES OF AMERICA, IN ADMIRALTY

acting by and through

the UNITED STATES DEPARTMENT
of the NAVY MILITARY SEALIFT
COMMAND, and UNITED STATES
DEPARTMENT OF THE ARMY
MILITARY TRAFFIC MANAGEMENT
COMMAND,
Defendants/Appellees.

DEPOSITION DE BENE ESSE OF ROBERT J. CLARK
San Francisco, California
Tuesday, April 10, 2007
Volume 1

Reported by:
DIANE M. GALLAGHER, RPR
CSR No. Michigan 2191
JOB No. 3-60770

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13 MILITARY TRAFFIC MANAGEMENT
14 COMMAND,
15 Defendants/Appellees.

16 Deposition de bene esse of ROBERT J. CLARK,
17 taken on behalf of Defendants/Appellees, at 450
18 Golden Gate Avenue, 7th Floor, Room 5395, San
19 Francisco, California, beginning at 10:15 a.m.,
20 and ending at 4:26 p.m., on Tuesday, April 10,
21 2007, before DIANE M. GALLAGHER, Certified
22 Shorthand Reporter, Michigan No. 2191.
23
24
25

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1 (Pages 1 to 4)

15:14 1 A There's the 50 containers, or 50, 55 containers
2 that I physically inspected, I saw loaded onto the
3 barge.
4 Q Right.
15:14 5 A I saw other barges up there with material that
6 came off of Adak. I did not see those particular
7 containers packed, but I saw the containers put onto the
8 barge on a couple of other occasions, one or two.
9 Did I see every barge, no, I did not.
15:14 10 Q Did you, do you have personal knowledge as to
11 what was shipped by air?
12 A In some instances, yes, I do.
13 Q Could you tell us, as best as you can remember,
14 what it is you do have personal knowledge of concerning
15:14 15 what was shipped by air?
16 MS. FRANKEN: Objection. Calls for a
17 narrative. You can answer.
18 THE WITNESS: Personally, I know all personnel
19 and their, what they characterize as their 30-day pack-
15:14 20 up was shipped by air. All mail was shipped by air.
21 Fresh fruit and vegetables coming into the station were
22 shipped by air. Triple 9 coded supply parts were
23 shipped by air. Some small IMRL, which is Individual
24 Material Requirements List, were shipped by air.
15:15 25 Galley equipment for the Naval Air Facility, Naval Air
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15:15 1 Station Fallon were shipped by air. That one, however,
2 went on a national -- Nevada Air National Guard C-130.
3 There's other small components I can't be specific on
4 but I saw shipped by air.
15:15 5 MR. BORAKS: Yeah.
6 MS. FRANKEN: Wait a minute. Wait a minute.
7 Wait a minute. Wait a minute. Are you done?
8 THE WITNESS: Yes.
9 MS. FRANKEN: Okay. Go ahead, sir.
15:15 10 Q (BY MR. BORAKS) Is your personal knowledge,
11 well, for example, you knew that the 50 to 55 containers
12 were shipped by barge and you knew that the crane was
13 shipped by barge because you actually saw them shipped
14 by barge.
15:16 15 Is your personal knowledge regarding what was
16 shipped by air of the same sort that you actually saw
17 this stuff shipped by air?
18 A I saw all of it shipped by air with the
19 exception of what was shipped on the Air National Guard
15:16 20 bird, which was the galley equipment, and I did not see
21 -- I saw the IMRL gear packed on a pallet. I did not
22 see it loaded onto the aircraft.
23 I saw numerous personnel on the aircraft and
24 their household goods, but not every one of them. So
15:16 25 it's a select sampling, if you will.
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15:16 1 Q Right. So what you believe was shipped by air
2 without having seen it, what's the basis for your
3 belief?
4 A The reports from the base, understanding that
15:17 5 what the requirements were, in other words, all
6 personnel and 30-day pack-ups were required to go by
7 air. Different message traffic that came across on
8 particularly what the kettles (sic), the equipment, that
9 was sent down to Fallon, Nevada, because they indicated
10 receipt of it. That's pretty much it, I guess.
11 Q In connection with the shipment of cargo,
12 either by barge or by air, are you familiar with the
13 paper trail that is created regarding that?
14 A Generally speaking, yes.
15:17 15 Q And what documents are created when something
16 is shipped?
17 A If it's shipped by air, for example, there's a
18 request that is generated by the supply officer that
19 went back to the Air Force, the Air Force scheduler, and
15:18 20 then the cargo was scheduled for a pickup. Then the
21 cargo itself is manifested.
22 A manifest is generated on each pallet that
23 goes into the aircraft. That manifest is then
24 delivered to the crew. A copy of it goes to a parent
15:18 25 activity which could be FISC, whoever the owner of the
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15:18 1 cargo is, the receiver, and a copy is retained by the
2 supply officer, the shipping, whoever shipped it, and
3 then away it goes.
4 By barge, there was -- I do not know if a
15:18 5 requisition was actually drawn up because the barge had
6 a significant capacity, and it was scheduled on a
7 monthly basis.
8 So I believe that the island would look at it
9 from how much space they had available and what they
10 needed to fill.
11 They would create a shipping document for the
12 containers, which you have seen, and that shipping
13 document would contain what's in the containers, and
14 they would load it on and away they would go.
15:19 15 The base, the supply officer would maintain a
16 copy of it. I believe Samson would receive a copy of
17 it, and I believe other copies would go to whoever was
18 on the receiving end of the cargo and who was paying for
19 it.
15:19 20 Q Okay. Did your shop maintain any of the
21 records that you have just described?
22 A No, we did not.
23 Q Okay. Now, with regard to inventories of what
24 was on the base, I believe your testimony was that at
15:19 25 some point in time there was what amounted to a
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16:17 1 Adak, which was about the April of '95 time frame.
 2 Q Do you know for sure?
 3 A No. No, I couldn't tell the specific date.
 4 I just remember seeing it because it was odd to see it
 16:17 5 there.
 6 Q Do you know where it had come from?
 7 A No.
 8 Q Do you know where it was headed?
 9 A I believe it was heading to Japan, but I do not
 16:17 10 know that to be a fact.
 11 Q Did you ever see this Strong Texan there again?
 12 A No, I did not.
 13 Q Did you come to any knowledge about it having
 14 called on Adak again after that one time?
 16:18 15 A No, not that I am aware of.
 16 Q Why did Mr. Halko say he was asking you for
 17 manifests?
 18 A They were trying to confirm a billing.
 19 Q Did he tell you that it had anything to do with
 16:18 20 a claim he was making against the government?
 21 A No, he did not.
 22 Q What billing did he say he was looking for?
 23 A He was looking for the manifests for the last
 24 off-load, barge off-load in April, the one that I did
 16:18 25 the physical inspection on.

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16:19 1 A Flight manifests?
 2 Q The question seemed to cover all kinds of
 3 manifests, and you said they were all sent to Whidbey
 4 Island, I believe?
 16:19 5 A Right. I don't know that I thought they were
 6 specific flight manifests. Generally the flight
 7 manifest goes with the aircraft.
 8 Q Do you have any reason to believe that any
 9 manifesting from flights on or off Adak would have been
 16:20 10 kept on the island?
 11 A No. The only records that would probably have
 12 been kept would have been the supply records of what was
 13 shipped and the means it was shipped.
 14 Q Do you have any reason to believe that flight
 16:20 15 manifests of any kind would have gone from Adak to
 16 Whidbey Island?
 17 A I don't believe the manifests themselves. Just
 18 the supply records.
 19 MS. FRANKEN: I have no other questions.
 16:20 20 MR. BORAKS: I have got two.
 21 RE-EXAMINATION
 22 BY MR. BORAKS:
 23 Q The manifests that you're talking about, you
 24 say, I thought I heard you say they went with the cargo.
 16:20 25 Were there no copies of manifests maintained

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16:18 1 Q And what was there about billings that he
 2 needed that manifest for, if he told you?
 3 A I don't recall. All he asked me if we could
 4 locate the manifest.
 16:18 5 Q As far as you know, did you ever?
 6 A As far as I know, he never received them.
 7 Q So you thought that the manifests for the barge
 8 shipments were sent to archives at Whidbey Island, is
 9 that right?
 16:18 10 A Yes. Yes.
 11 Q Why did you think that?
 12 A That's where all of the records went, the
 13 historical records from Adak were transferred to Whidbey
 14 Island.
 16:19 15 I confirmed that with Cindy Williams, which is
 16 why I initially called her because she knew where the
 17 records went. Cindy was a civilian employee of the
 18 Commander Naval Base in Seattle.
 19 Q Those would be the Navy's base records then?
 16:19 20 A Their historical records from the base. They
 21 are all Navy-type records, yes.
 22 Now I don't know specifically what would be in
 23 there. That was just a good place for us to look.
 24 Q Why did you think there might be flight
 16:19 25 manifests in those archived records?

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16:20 1 apart from the cargo?
 2 MS. FRANKEN: Objection. Calls for
 3 speculation. Lack of foundation. Vague and ambiguous.
 4 You can answer.
 16:21 5 THE WITNESS: When they manifested the cargo,
 6 they would, generally the supply officer would keep a
 7 copy of a manifested -- a copy goes with the cargo
 8 itself so the transporting agency knows the final
 9 destination, and then the air crew would have a copy of
 16:21 10 the manifest for weight and balance.
 11 Q (BY MR. BORAKS) Okay. So am I understanding
 12 you correctly that there, at least at one time there was
 13 a place where copies of the cargo manifests were
 14 maintained; would that have been on Adak?
 16:21 15 MS. FRANKEN: Objection. Assumes facts not in
 16 evidence. Mischaracterization of his testimony. Lack
 17 of foundation. Calls for speculation. You can answer.
 18 THE WITNESS: The supply officer would have
 19 maintained a copy of the manifest.
 16:21 20 MR. BORAKS: Okay. That's all I have.
 21 RE-EXAMINATION
 22 BY MS. FRANKEN:
 23 Q Mr. Clark, you don't really know what the
 24 requirements were for anyone to maintain manifests, do
 16:22 25 you?

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